AGL Oct 6 Cong

RECEIVED
OCT 5 - 1978
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT

OF

THE UNITED STATES OF AMERICA

October Term 1977

No. 77-6868

DONALD GENE RUNYAN,

Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

On Appeal from the Supreme Court of California

OPPOSITION TO MOTION TO DISMISS OR AFFIRM

SOUTHWESTERN CLINICAL LAW CENTER
R.J. WILLIAMSON, ROBERT V. BEAUDRY,
ANSYLENE A. ABRAHAM, RICHARD EIDEN,
RICHARD SOLOMON and JAMES KUSHNER
3045 West Seventh Street
Los Angeles, California 90005
(213) 380-4790

LEWIS R. TITUS
Of Counsel

R.J. WILLIAMSON
ANSYLENE A. ABRAHAM
Attorreys for Appellant,
Donald Gene Runyan

TOPICAL INDEX

	Pages
OPPOSITION TO MOTION TO DISMISS OR AFFIRM	1
I. FINAL STATE PROHIBITION ORDERS DISPOSING OF COLLATERAL CLAIMS ARE FINAL JUDGMENTS WITHIN 28 U.S.C.§1257 AND ARE REVIEWABLE BY THIS COURT ON DIRECT APPEAL	1 - 4
II. ALL FACTORS FAVOR THE EXERCISE OF JURISDICTION	5 - 7
III. SUBSTANTIAL QUESTIONS ARE PRESENTED	7 - 8

TABLE OF AUTHORITIES

CASES	Pages
Arceneaux v. Louisiana, 376 U.S. 336 (1964)	4
Bandini Petroleum Co. v. Superior Court, 284 U.S. 8 (1931)	1, 2
Bryant v. Zimmerman, 278 U.S. 63 (1928)	4
City of Seattle v. Beezer, 376 U.S. 224 (1964)	2
Costarelli v. Massachusetts, 421 U.S. 193 (1975)	2
Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1974)	5
Detroit & M. Ry. v. Michigan R.R. Comm'n., 240 U.S. 540 (1916)	1
Dickinson v. Petroleum Coversion Corp., 338 U.S. 507 (1950)	6
Fisher v. District Court of the Sixteenth Jud. Dist., 424 U.S. 382 (1976)	2
Forgay v. Conrad, 47 U.S. (6 How.) 200 (1848)	6
In re United States, 348 F.2d 624 (1st Cir. 1965)	5
Madison-Lewis, Inc. v. Mac Mahon, 299 F.2d 256 (2nd Cir. 1962)	5
Madruga v. Superior Court, 346 U.S. 556 (1954)	2
Missouri ex rel. St. Louis, B. & M. Ry. v. Taylor, 266 U.S. 200 (1924)	1
Pacific Coast Dairy, Inc. v. Department of Agriculture, 318 U.S. 285 (1943)	1-2
People v. Municipal Court (Runyan) (1978) 20 Cal.3d 523, ____Cal. Rptr.____	2, 3, 5, 8
Republic Gear Co. v. Borg-Warner Corp., 381 F.2d 551 (2nd Cir. 1967)	7
Rescue Army v. Municipal Court, 331 U.S. 549 (1947)	2
Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 496 F.2d 800 (2nd Cir. 1974)	6
Weston v. Charleston, 2 Pet. 449 (1829)	1
STATUTES	
28 U.S.C. §1257	1
Cal. Veh. Code §23102(a)	3
Cal. Pen. Code §148	3
Cal. Pen. Code §594(a)	3
Cal. Pen. Code §1335 et seq.	4, 8

LAW REVIEW ARTICLES	Pages
The Finality Rule For Supreme Court Review of State Court Orders, 91 Harv. L.Rev. 1004 (1978)	7
Federal Habeas Corpus For State Prisoners: The Isolation Principle, 39 N.Y.U. L.Rev. 78 (1964)	7

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-6868

DONALD GENE RUNYAN,

Appellant,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

OPPOSITION TO MOTION TO DISMISS OR AFFIRM

I.

FINAL STATE PROHIBITION ORDERS DISPOSING OF COLLATERAL CLAIMS ARE FINAL JUDGMENTS WITHIN 28 U.S.C.§1257 AND ARE REVIEWABLE BY THIS COURT ON DIRECT APPEAL

Supreme Court review of state court decisions on appeal or certiorari is limited to "(f)inal judgments or decisions rendered by the highest court of a State in which a decision could be had..." according to 28 U.S.C.§1257.

That this Honorable Court can exercise jurisdiction pursuant to 28 U.S.C.§1257 in cases limited to review of final state prohibition orders disposing of collateral claims has long been settled and consistently upheld beginning with the case of Weston v. Charleston, 2 Pet.449 (1829) decided by the Chief Justice Marshall. This rule has been reaffirmed consistently. Detroit & M. Ry. v. Michigan R.R. Comm'n, 240 U.S.564 (1916);Missouri ex rel. St. Louis, B. & M. Ry. v. Taylor,266 U.S.200 (1924); Bandini Petroleum Co. v. Superior Court, 284 U.S.8 (1931); Pacific Coast Dairy,Inc. v. Department of Agriculture,

318 U.S.285 (1943); Rescue Army v. Municipal Court,331 U.S. 649 (1947); Madruga v. Superior Court, 346 U.S.556 (1954); City of Seattle v. Beezer, 376 U.S.224 (1964)(per curiam); Costarelli v. Massachusetts, 421 U.S.193 (1975)(per curiam); Fisher v. District Court of the Sixteenth Jud. Dist.,424 U.S. 382 (1976).

Specifically the rule was noted in Fisher v. District Court of the Sixteenth Jud. Dist., supra,

> "A judgment that terminates original proceedings in a state appellate court, in which the only issue decided concerns the jurisdiction of a lower state court, is final even if further proceedings are to be had in the lower court."424 U.S. at 385.

People v. Municipal Court(Runyan), 20 Cal.3d 523, constitutes a judgment that terminated an original proceeding in a state appellate court. The California Supreme Court's judgment has the effect of terminating the original proceeding that was initiated by the People, hereinafter Appellee, in the Superior Court Appellate Department. That original proceeding brought by the Appellee was an application for a writ of prohibition, seeking exercise of the original jurisdiction of the Appellate Depatment.[1] As stated in Bandini Petroleum Co. v. Superior Court, supra, 284 U.S. at 14, the proceeding for a writ of prohibition is a distinct

---

1. Cal. Const., Art. VI,§11 states that "Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts in their counties." The Legislature through Cal.Pen. Code §1469 provided that municipal court appeals go to the Appellate Department of the Superior Court.

suit, and the judgment finally disposing of it is likewise a final judgment. This Court further noted that in California, in accordance with the general conception of the province of the writ, prohibition was for the purpose of arresting the proceedings of any tribunal exercising judicial functions without or in excess of its jurisdiction. Further, in People v. Municipal Court(Runyan), supra, the only issue decided was the jurisdiction of the lower state appellate court, in that the Appellee sought a writ of prohibition in an original proceeding, alleging that the trial court had acted without or in excess of its jurisdiction.

The prohibition order appealed in the instant case is a final state prohibition order. Since the California Supreme Court is the highest state court that can rule on such an extraordinary writ there can be no further collateral proceedings in the state court system.

The prohibition order appealed by the Appellee disposed of collateral or independent claims relating only to the jurisdiction of the trial court. The main underlying proceeding herein involved drunk driving, Cal.Veh.Code §23102(a), obstructing a police officer, Cal.Pen.Code §148, and vandalism, Cal.Pen.Code §594(a). Thus, the order appealed does not involve an ingredient of the Appellee's prosecution in this case. Instead, this case involves the narrowly defined issue of the trial court's jurisdiction. It is Appellant's position that to provide fundamental fairness, due process and the right to effective counsel, a deposition of certain police officers was needed. The trial court found that such need was demonstrated. The California Supreme Court held that the trial court's jurisdiction to order the depositions

was limited by Cal.Pen.Code §1335 et seq.

The case of Arceneaux v. Louisiana, 376 U.S.336 (1964)(per curiam) relied on by the Appellee in its motion to dismiss or affirm is clearly distinguishable. In Arceneaux, supra, this Court noted that "when petitioner sought review of the denial of a preliminary hearing, he tried to raise the constitutionality of the vagrancy statute[underlying the main proceeding]." 376 U.S. at 338. Thus, the petitioner in Arceneaux, supra, attempted to secure appellate review on precisely the same issues to be litigated at the impending trial. Such a proceeding is manifestly not collateral to the underlying main proceeding at all and the denial of review by this Court is quite consistent with its prior holdings.

Further, it is essential to note that no hearing was granted in Arceneaux, supra, by any state appellate court, as the attempted appeal was directly contrary to state law.

In Bryant v. Zimmerman, 278 U.S.63 (1928), at 70-71, this Court held that it was essential in order for it to review an appeal that the proceeding was not brought contrary to the established practice in the state, but was in keeping with the practice confirmed by local statutes. As noted by this Court in Arceneaux, supra, at 338, however:

> "In Louisiana it seems that, with exceptions not relevant here, only orders which finally dispose of criminal cases can be appealed. See La.Rev.Stat.§15:540."

In the instant case, the contrary exists. The original proceeding in the Appellate Department and the subsequent appeals were proper and authorized by State law.

4

II.

ALL FACTORS FAVOR THE EXERCISE OF JURISDICTION

As noted, People v. Municipal Court(Runyan), supra, constitutes a "final judgment", notwithstanding the current pretrial status of the state trial court proceedings. Appellate review is not only proper but appropriate, as shown by consideration of the federal cases wherein immediate appellate review of discovery orders regarding depositions was allowed prior to trial. In Madison-Lewis, Inc. v. MacMahon, 299 F.2d 256(2nd Cir.1962), defendant obtained mandamus when the trial court attached a condition not authorized by the rules to the order for taking the depositions, and in In re United States, 348 F.2d624 (1st Cir.1965) it was held mandamus was available to the government when the district court's order permitting the taking of depositions was the result of a misconstruction of the rule.

Immediate review would further serve federal policy. As was held in Cox Broadcasting Corp. v. Cohn, 420 U.S.469 (1974),

> "...if a refusal immediately to review the state-court decision might seriously erode federal policy, the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of state litigation." 420 U.S. at 483

Two basic federal policies will be preserved through immediate review of this case. First, Appellant can conceive of no greater federal policy considerations that may suffer erosion in this case than those arising under the Constitution, specifically those providing for fundamental fairness, due process and effective counsel.

5

It is Appellant's position that his rights in this case are presently violated and he will suffer irreparable injury irrespective of the outcome of the main proceeding.

The effectiveness of counsel in this case is directly proportional to the duration and extent of discovery allowed in this case. Such denial of effective counsel is analogous to disqualification of counsel cases where immediate review is allowed because of the unreasonable and irreversible impact on the course of subsequent proceedings. See Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp., 496 F.2d 800 (1974).

Considering that Appellant must engage in discovery before trial in order to give the right of effective counsel substance, postponement of the issue until the termination of the underlying main proceeding will nullify Appellant's right to effective assistance of counsel, causing potential irreversible harm. It has long been held by this Court that if postponement of review will cause irreparable harm, review should be granted. Forgay v. Conrad, 47 U.S.(6 How.) 200 (1848); Dickinson v. Petroleum Conversion Corp., 338 U.S.507, 511 (1950).

In additon, Appellant has the due process right to have the trial court exercise its jurisdictional power to provide for fundamental fairness. Postponement of this question until later review not only causes irreparable harm to Appellant by proceeding through an unfair trial but also propounds confusion generally in state criminal proceedings.

Finally, postponement of review until after Appellant's potential conviction places him in the most

unfortunate position of having to demonstrate that denial of the court's protection to provide fundamental fairness and effective assistance of counsel is prejudicial error based upon abuse of discretion. As noted in federal cases, such a remedy would be sadly wanting. See Republic Gear Co. v. Borg-Warner Corp., 381 F.2d 554 (2nd Cir. 1967).

A second federal policy that is served through immediate review concerns judicial economy both in terms of unnecessary delay and deliniation of issues. Immediate review will save the time and expense of an unnecessary and unfair trial. There is no reason to delay review of properly framed issues until after the subsequent trial of the main proceeding. It has been recognized that judicial clarity of particular crucial issues is enhanced when immediate review is granted. As argued, "...appellate resolution of legal issues is improved when the issues are abstracted from the complicated network of legal and factual challenge that is often presented when a fully adjudicated case is submitted to the appellate court." Note, The Finality Rule for Supreme Court Review of State Court Orders, 91 Harv.L.Rev. 1004, 1007 (1978). Also by analogy to habeas corpus proceedings, isolation of the federal rights from other elements in the criminal prosecution promotes their vindication. Note, Federal Habeas Corpus for State Prisoners: The Isolation Principle, 39 N.Y.U.L.Rev. 79 (1964).

III.

SUBSTANTIAL QUESTIONS ARE PRESENTED

The fundamental and unanswered questions presented involve whether a state criminal statute may be applied

to deprive a defendant of a discovery device found by the trier of fact to be necessary to assure a fair trial, due process and effective counsel. The Appellee chose to state the issue as:

> "...whether the right to a fair trial, due process or effective assistance of counsel requires that a pretrial deposition of a material witness for purposes of discovery be ordered upon defendant's request where defendant alleges unconsciousness at the time of the crime." (Appellee's Motion to Dismiss or Affirm, p.1)

The Appellee fails to state, however, that findings of fact were made both by the Trial Court and the Appellate Department of the Superior Court that said depositions were necessary for a fair trial and to "...properly prepare an intelligent defense to the charges."(Juris. Statement, p.6).

Said findings, as noted in the dissenting opinion in Runyan have never been disputed by Appellee, so that the true issues are clearly the limits placed by Cal.Pen.Code §1335 et seq. on the courts power to provide for a fair trial and assure federal constitutional guarantees of effective counsel. These questions have not been answered by this court, and require plenary consideration.

WHEREFORE, for the reasons contained herein, Appellant respectfully moves this Court to deny Appellee's Motion to Dismiss or Affirm.

DATED: October 4, 1978.

Respectfully submitted,
SOUTHWESTERN CLINICAL LAW CENTER

By _____
R.J. Williamson

By _____
Arsylene A. Abraham
Attorneys for Appellant